

**BEFORE THE FITNESS TO PRACTISE COMMITTEE  
OF THE GENERAL OPTICAL COUNCIL**

**GENERAL OPTICAL COUNCIL**

**F(11)17**

**AND**

**SABEEN KHAN (01-24790)**

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**DETERMINATION OF THE INQUIRY: 14 JULY 2011**

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On 14 July 2011, the Fitness to Practise Committee of the General Optical Council met to consider allegations against Sabeen Khan.

**APPLICATION**

Mr Toomey, Counsel for Mrs Khan, made an application to hear the application in private. Ms Lord, for the Council, did not oppose the application which was granted by the Committee.

The reasons for this determination arise out of an application made in private because it concerned matters relating to the health of the Registrant.

The application was made to adjourn the hearing and is refused. The Committee's reasons are given in private.

Redacted

**ALLEGATION**

The Council alleges that in relation to you, Sabeen Khan, a registered optometrist:

1. On 27 April 2001, at Bradford Magistrates Court, you were convicted of Theft, contrary to Section 1(1) of the Theft Act 1968 and you:
  - a) received a Conditional Discharge for one year; and
  - b) were ordered to pay Crown Prosecution Costs of £40.00.
2. On 23 March 2001 you received a caution from West Yorkshire Police for an offence of Theft contrary to Section 1(1) of the Theft Act 1968, relating to the theft, by finding, of a mobile phone.

3. In or around June 2009, you submitted an application to the East Lancashire Primary Care Trust for inclusion on the Ophthalmic Performers List and in that application you failed to declare your caution, set out at paragraph 2 above.
4. In or around February 2010, you submitted an application to the East Lancashire Primary Care Trust for inclusion on the Ophthalmic Performers List which you signed and dated 7 February 2010, and in that application:
  - a) you failed to declare that you were at that time the subject of an investigation into your professional conduct by a regulatory body; and
  - b) you failed to declare that you were the subject of an investigation into your professional conduct in respect of a previous employment;
5. On 18 May 2010 you received a 12 month conditional caution for an offence of Fraud by False Representation, contrary to sections 1 and 2 of the Fraud Act 2006.
6. You made an application to the General Optical Council for Registration as a student optometrist dated 3 June 2005 in which you failed to declare:
  - a) that you had been the subject of criminal proceedings, in relation to the offence, as set out at paragraph 1 above; and
  - b) your caution as set out at paragraph 2 above.
7. You made an application to the General Optical Council for Retention as a student optometrist dated 10 July 2006 in which you failed to declare:
  - a) that you had been convicted of a criminal offence, as set out at paragraph 1 above; and
  - b) your caution as set out at paragraph 2 above.
8. You made an application to the General Optical Council for Registration as an optometrist dated 4 July 2009 in which you failed to declare:
  - a) that you had been convicted of a criminal offence, as set out at paragraph 1 above; and
  - b) your caution as set out at paragraph 2 above.
9. Your actions as set out at paragraphs 3, 4, 6, 7 and 8 above were dishonest.
10. Your actions as set out at paragraphs 1, 3, 4, 6, 7, 8 and 9 above amount to misconduct.
11. By virtue of your misconduct and/or cautions your fitness to practise is impaired.

## DETERMINATION

### Findings in relation to the allegation, caution and misconduct

1. The Registrant admitted the following facts of the allegation: 1(a), 1(b), 2, 3, 4(a), 4(b), 5, 6(a), 6(b), 7(a), 7(b), 8(a) 8(b) and accordingly, the Committee found them proved.
2. In reaching its determination the Committee has accepted and taken into account the advice of the Legal Adviser, and the evidence adduced by the Council. The Committee has borne in mind the fact that the burden of proof lies on the Council. It has also given consideration to the standard of proof when considering the evidence before it.
3. The Committee considered each paragraph of the allegation separately. The Registrant accepted in evidence that she had failed to make accurate and complete declarations in each of the relevant application forms completed for the PCT and for the GOC. The application forms were formal and important documents. They contained specific and clear questions which would ordinarily require careful consideration and answer. The Committee was also satisfied that the Registrant knew that she was being dishonest at the time of the applications in 2009 and 2010 with which paragraphs 3, 4, and 8 are concerned.
4. These errors were not isolated but repeated. The Registrant's explanation for not referring to the 2001 matters varied between an assertion that she had blotted them out of her mind and an assertion that she did not consider that they matched her understanding of what a conviction amounted to. The Committee was not persuaded that the events of 2001 were in fact absent from her mind or that she had in fact blotted them out of her memory. The questions may have provoked painful memories, including having gone to the Magistrates Court but, at least at the stage of her formal applications in 2009 and 2010, their relevance must have been obvious.
5. On 7 February 2010 for example she completed the PCT application which is the subject of paragraph 4 of the allegation and yet failed to declare the fact that the Registrant had been suspended and was under investigation by the GOC. She failed to do so despite the fact that she had been suspended by the GOC in August 2009 and despite the fact that, only 6 days before, she had been arrested by the police in respect of the same matters. The Committee concluded that these investigations cannot have been absent from her mind and they reject her explanation that she was told to re-present her forms with changes only to the questions regarding previous convictions or cautions.
6. The Committee, however, hesitated in reaching a finding of dishonesty in relation to the student registration applications in 2005 and 2006. The Committee considered it more likely that, in the context of student registration, those applications may have been completed carelessly rather than with a conscious intent and give the Registrant the benefit of the doubt.
7. The Committee therefore found Sabeen Khan guilty of misconduct in respect of paragraphs 3, 4 and 8 by reason of dishonesty and in respect of paragraphs 1, 2 and

5 by reason of the dishonest behaviour which led to the conviction and cautions.

### **Findings regarding impairment**

1. In reaching its determination on this issue the Committee has again accepted and taken into account the advice of the Legal Adviser, and has had regard to the facts found in its preceding reasons. It has also considered the submissions made on behalf of the Council and on behalf of the Registrant.
2. The incidents in 2001 would not themselves have any relevant impact on her current fitness to practise.
3. However her conduct in deliberately and deceitfully using her husband's registration number in June 2009 was very serious. She acted in the full knowledge that she was at that time unregistered, and in the full knowledge that there were unresolved issues relating to her indemnity insurance. Nor was she listed with a PCT. Her conduct represented a blatant and dishonest disregard for the system of registration which, as acknowledged on her behalf, is in place in order to maintain standards and protect the public.
4. So too was her repeated dishonesty in failing to make proper declarations when making her respective applications in 2009 and 2010.
5. In short the Committee, having listened with care to the Registrant's evidence was not satisfied that her explanations were credible. Nor was the Committee satisfied that she has demonstrated sufficient insight.
6. In the judgment of this Committee the history of repetitive dishonest misconduct satisfies them that her fitness to practise is impaired. Such a finding is also necessary in order to declare and uphold proper standards of conduct in the profession and to maintain public confidence.
7. The Committee therefore finds the fitness of Sabeen Khan to practise as an optometrist is impaired.

### **Sanction**

1. In reaching its determination the Committee has again accepted and taken into account the advice of the Legal Adviser, and has had regard to the facts found in its preceding determination in these proceedings. It has also taken into account the submissions made by both parties.
2. It has in particular borne in mind the public interest factors which underpin the purpose of these proceedings, the principles of proportionality and the indicative sanctions guidance.
3. Applying those principles the Committee has considered the successive sanctions open to it. They considered that this was not a case where no sanction would be appropriate or where a financial penalty would be appropriate.
4. The Committee then considered carefully whether conditions were appropriate. It has concluded that this sanction would not in this case be sufficient to meet the need to declare and uphold the professional standards of this profession. Nor was the Committee satisfied that conditions would be workable or appropriate.

5. In deciding whether or not a period of suspension was proportionate or whether erasure should be ordered the Committee has paid particular regard to the factors outlined at pages 23 to 25 of the Guidance.

6. In doing so it has borne very much in mind the need to make clear that serious and sustained or repeated dishonesty represents conduct which is ordinarily incompatible with retention on the register of this profession. The Committee's findings at the preceding stages have indicated the view which it takes of the Registrant's conduct and are not repeated here.

7. The Committee has also taken into account fully the need to maintain proportionality. Mitigating factors have been urged upon it and have been considered. However no testimonial evidence was put before the Committee. It is acknowledged that she pleaded guilty to the criminal matters, that and she did not resist the interim suspension order which was made in August 2009 and continues to this day. However, it also noted that she completed the application form in paragraph 4 of the allegation during this period. The Committee considers that this persisting and deliberate dishonest act on her part, at a time when she knew that she was under investigation and was fully aware of the gravity of her previous actions shows a lack of insight. Nor did her evidence before this Committee dispel that conclusion.

8. The Committee considered matters of personal mitigation advanced but consider these to be of lesser weight in a case involving misconduct of the kind proven in this instance. Her conduct represented a blatant disregard for the system of registration and she has not satisfied this Committee that she has insight.

9. The Committee has concluded that erasure is the proportionate sanction in this case to reflect the seriousness and persistence of the Registrant's departures from the relevant professional standards as set out in the Code of Conduct for Registrants.

#### **Revocation of interim order**

The Committee hereby revokes the interim order for suspension of registration that was made on 3 August 2009 and extended by the High Court to 1 August 2011.

#### **Immediate order**

As noted in the Committee's determination on sanction the Registrant has prior to this hearing been subject to an interim suspension order which would otherwise have expired on 1 August 2011. The reasons set out in the determination on sanction also persuade this Committee that it is in the public interest that an immediate order for suspension is imposed. The Council submitted such an order should be made and the Registrant's representative made no opposing submissions.

**Chairman of the Committee: Mercy Jeyasingham MBE**

Signed \_\_\_\_\_ Date 14 July 2011

**Registrant: Sabeen Khan**

Signed \_\_\_\_\_ Date 14 July 2011

<b>FURTHER INFORMATION</b>
<p><b>Transcript</b></p> <p>A full transcript of the hearing will be made available via the GOC website in due course.</p>
<p><b>Appeal</b></p> <p>Any appeal against an order of the Committee must be lodged with the relevant court within 28 days of the service of this notification. If no appeal is lodged, the order will take effect at the end of that period. The relevant court is shown at section 23G(4)(a)-(c) of the Opticians Act 1989 (as amended).</p>
<p><b>Council for Healthcare Regulatory Excellence</b></p> <p>This decision will be reported to the Council for Healthcare Regulatory Excellence (CHRE) under the provisions of section 29 of the NHS Reform and Healthcare Professions Act 2002. CHRE may refer this case to the High Court of Justice in England and Wales, the Court of Session in Scotland or the High Court of Justice in Northern Ireland as appropriate if they decide that a decision has been unduly lenient and/or should not have been made, and if they consider that referral is desirable for the protection of the public. CHRE is required to make its decision within 40 days of the hearing (or 40 days from the last day on which a registrant can appeal against the decision, if applicable) and will send written confirmation of a decision to refer to registrants on the first working day following a hearing. CHRE will notify you promptly of a decision to refer. A letter will be sent by recorded delivery to your registered address (unless CHRE has been notified by the GOC of a change of address).</p> <p>Further information about the CHRE can be obtained from its website at <a href="http://www.chre.org.uk">www.chre.org.uk</a> or by telephone on 020 7389 8030.</p>
<p><b>Effect of orders for suspension or erasure</b></p> <p>To practise or carry on business as an optometrist or dispensing optician, to take or use a description which implies registration or entitlement to undertake any activity which the law restricts to a registered person, may amount to a criminal offence once an entry in the register has been suspended or erased.</p>
<p><b>Contact</b></p> <p>If you require any further information, please contact the Council's Hearings Manager at 41 Harley Street, London, W1G 8DJ or, by telephone, on 020 7580 3898.</p>